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February 1, 2008

The Honorable Claudia Wilkin
United States District Courthouse
1301 Clay Street, Suite 400 S
Courtroom 2
Oakland, California 94612-5212

Re: Thomas v. Disney, et al., Case No. CV 07-04392 CW

Dear Judge Wilkin:

Pursuant to the Court's request during the January 31, 2008 hearing on Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, the following cases support the proposition that although ideas are not protected by the Copyright Act, ideas are "within the subject matter of copyright" for purposes of preemption under the Copyright Act, and therefore, without the extra element of an alleged breach of confidence, Plaintiff cannot state a claim for unfair competition: *Blue Nile, Inc. v. Ice.com, Inc.*, 478 F. Supp. 2d 1240, 1247-48 (W.D. Wash. 2007); *Lanard Toys Ltd. v. Novelty, Inc.*, 511 F.Supp.2d 1020, 1030-31 (C.D. Cal. 2007); *Entous v. Viacom*, 151 F. Supp. 2d 1150, 1159 (C.D. Cal. 2001); *Selby v. New Line Cinema Corp.*, 96 F. Supp. 2d 1053 (C.D. Cal. 2000); see also *Wrench, LLC v. Taco Bell Corp.*, 256 F.3d 446, 454-455 (6th Cir. 2001); *U.S. ex rel. Berge v. Board of Trustees of the University of Alabama*, 104 F.3d 1453, 1463, 1465 (4th Cir. 1997); and *NBA v. Motorola, Inc.*, 105 F.3d 841, 849 (2d Cir. 1997).

Respectfully submitted,



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cc: Archie Robinson (via email)

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